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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,407

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EXAMINER

WOOD, JONATHAN K

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,407	<b>Applicant(s)</b> LE MANER, FRANCOIS	
	<b>Examiner</b> JONATHAN WOOD	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-19 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/5/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of copending Application No. 12/293,478. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitation of Application No. 12/293,478 to connect the pump chamber to the reservoir each time the pump is actuated is broad enough to include when the pump is primed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 30. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 12. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The abstract of the disclosure is objected to because it includes the legal phraseology 'said'. Correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

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6. The disclosure is objected to because of the following informalities: it does not include section headings. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 11, 12 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the phrase 'and/or' in line 3. This phrase renders the claim indefinite because it is unclear if both or only one of the surrounding limitations is required by the claim.

Claim 16 recites the limitation "said valve seat" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to "a valve seat" or define a valve seat earlier in the claim.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 1 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 7,182,226 B2 to *Mbonyumuhire (Mbony)*.

*Mbony* shows a pump comprising a pump body (3), a pump chamber (col. 6, line 46), a piston (9 to 11) sliding in the pump chamber, a dispensing orifice (18), and a closer (16) displaceable between a closing position and open position of the dispensing orifice (col. 6, ll. 45-56), characterized in that the pump chamber has an inlet valve (10 with 4) separating the pump chamber from a dip tube (7) extending into a reservoir (col. 2, line 58) and a bypass passage arranged upstream of the inlet valve providing a connection between the dip tube and the pump chamber when the pump is primed (col. 6, ll. 18-29).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1-6 and 8-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,640,443 to *Corsette* in view of *Mbony*.

*Corsette* shows a pump comprising a pump body (part of 36 that is not 31), a pump chamber (27), a first piston (24) sliding in the pump chamber, a dispensing orifice (42), and a closer (49) displaceable between a closed position and an open position of the dispensing orifice (col. 5, ll. 3-26), characterized in that the pump chamber has an inlet valve (21 with 22) separating the pump chamber from a dip tube (19) extending to a reservoir (col. 3, line 8). *Corsette* does not disclose a bypass passage arranged upstream of the inlet valve providing a connection between the dip tube and the pump chamber when the pump is primed. However, *Mbony* shows a pump comprising a pump body (3), pump chamber (col. 6, line 46), and piston (9 to 11), characterized in that the pump chamber has an inlet valve (10 with 4) separating the pump chamber from a dip tube (7) and a bypass passage arranged upstream of the inlet valve providing a connection between the dip tube and the pump chamber when the pump is primed (col. 6, ll. 18-29). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Mbony*, to have replaced the inlet



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valve structure of *Corsette* with the inlet valve structure of *Mbony* in order to reduce the number of strokes required to prime the pump (col. 6, ll. 30-35). The resulting combination would yield the pump body of *Corsette* including an integral valve plunger 10 of *Mbony*, the valve seat 22 of *Corsette* being replaced by a valve seat similar to 13 of *Mbony*, and the internal channel of the piston body 15 of *Corsette* having a stepped configuration similar to the channel 4 to 6 of *Mbony*.

Regarding claim 2, *Corsette* as modified by *Mbony* shows the pump body in a single piece with the closer (*Corsette*, Figure 1).

Regarding claim 3, *Corsette* as modified by *Mbony* shows the inlet valve comprising a valve seat (13, *Mbony*) fixed to the first piston and a valve element (12, *Mbony*), the first piston sliding in a leak tight manner in the pump body (col. 3, ll. 46-49), and the pump body having an opening (opening in the middle of 47) cooperating with the first piston.

Regarding claim 4, *Corsette* as modified by *Mbony* shows the pump comprising a dispensing head (31) incorporating the dispensing orifice.

Regarding claims 5-6, *Corsette* as modified by *Mbony* shows the closer comprising a second piston (*Corsette*, 56) cooperating with the dispensing head and a third piston (*Corsette*, 54) which can be moved between a closed position and open position with respect to the dispensing head (*Corsette*, col. 5, ll. 51-68), the third piston separating the dispensing chamber into two parts, a first part between the closer and third piston and a second part between the third piston and the second piston and connected to the bypass passage (*Corsette*, Figure 1).

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Regarding claim 8, *Corsette* as modified by *Mbony* shows the second part of the pump chamber connected to the bypass passage through a passage (top of channel 13 of *Mbony*) between the second and third pistons.

Regarding claims 9 and 10, *Corsette* as modified by *Mbony* shows the second and third piston made in a single piece with the closer (*Corsette*, Figure 1).

Regarding claim 11, *Corsette* as modified by *Mbony* shows the closer elastically loaded by a spring (*Corsette*, 28).

Regarding claim 12, *Corsette* as modified by *Mbony* shows the third piston being moved into the open position by a displacement of the closer (*Corsette*, col. 5, ll. 51-68).

Regarding claim 13, *Corsette* as modified by *Mbony* shows the claimed invention except for the valve element being a ball. It would have been obvious to one of ordinary skill in the art at the time of the invention to have made the valve element a ball since the examiner takes Official Notice of the equivalence between a flexed lip, ball shape, or any other known shape for their use in the valve art and the selection of any of these known equivalents to seal along the valve seat when passing there through would be within the level of ordinary skill in the art.

Regarding claim 14, *Corsette* as modified by *Mbony* shows a single spring (*Corsette*, 28) moving both the first piston towards its rest position and the closer towards its closed position (*Corsette*, col. 3, ll. 49-53).

Regarding claim 15, *Corsette* as modified by *Mbony* shows the spring not in contact with the fluid product (*Corsette*, Figure 1).

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Regarding claim 16, *Corsette* as modified by *Mbony* shows the first piston and valve seat being made of a single piece with an attachment element (*Corsette*, 12) (*Corsette*, Figure 1).

### ***Allowable Subject Matter***

14. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754